Al-Shaʿrānī's Response to Legal Purism: A Theory of Legal Pluralism*

Ahmed Fekry Ibrahim

Abstract

Despite the claims of the Egyptian mystic ʿAbd al-Wahhāb al-Shaʿrānī (d. 973/1565) about the novelty of his legal work, many legal scholars see his contribution as a conservative restatement of a well-established doctrine of legal pluralism. This view implies that there was an uncontested view that supported pragmatic forum selection, which he was simply rehashing. I will offer a reevaluation of al-Shaʿrānī's legal work, placing it within the larger debate about the pragmatic selection of juristic views to facilitate people's transactions and Ottoman Ḥanafization. I will examine his *al-Mīzān al-Kubrā* and *Kashf al-Ghumma* and situate his project within a centuries-old theoretical

Correspondence: Ahmed Fekry Ibrahim, McGill University, Institute of Islamic Studies, Morrice Hall, Room 319, 3485 McTavish Street, Montreal, Quebec H3A 0E1. *E-mail*: ahmed.f.ibrahim@mcgill.ca

legal debate, showing that his theory departs in significant ways from the views of his predecessors.

Keywords

Introduction

The juristic discourse on the equal orthodoxy of the four Sunni schools of law (*madhāhib*) and two Prophetic traditions to this effect have led some legal historians to assume that al-Shaʿrānī's work on legal pluralism is a rehashing of well-established Sunni doctrine.[1] This view implicitly equates the doctrine of the equal orthodoxy of the four schools with the ability to actively select a more appropriate juristic opinion for pragmatic reasons. I will argue in this essay that al-Shaʿrānī's concern is not only with the equal orthodoxy of the four schools, but also with the issue of permitting people to use this legal plurality to facilitate their legal and ritual transactions. I will show that while al-Shaʿrānī engages an old debate, he offers a new theory that resembles Sufi conceptions of states on the one hand and the juristic discourse on necessity (*ḍarūra*) and need (*ḥāja*) on the other.

In *al-Mīzān al-Kubrā* and *Kashf al-Ghumma*, al-Shaʿrānī addresses a number of questions that were important for legal practice in his time: Is a Muslim required to abide by one school in all transactions? Can subjects of the law switch schools, not permanently due to stronger belief in the validity of another school, but in the space of a single transaction? Is changing school in a single transaction valid only if it is motivated by an evaluation of evidence in which the person finds one school view to be superior to another? These questions touched people's lives in al-Shaʿrānī's time, and some of them were at least partly inspired by the Ottoman policy of legal homogenization.

---

[1] See Samuela Pagani, "The Meaning of the *Ikhtilāf al-Madhāhib* in ʿAbd al-Wahhāb al-Shaʿrānī's *al-Mizān al-Kubrā*," *Islamic Law and Society* 11:2 (2004): 177-212, at 177, 184; *EI²*, s.v. Ikhtilāf (J. Schacht).

The debate that al-Shaʿrānī engages assumes a binary distinction between crossing school boundaries for pragmatic or evidential reasons. This is clearly seen when al-Shaʿrānī cites his teacher Jalāl al-Dīn al-Suyūṭī (d. 911/1505), who draws a distinction between crossing school boundaries for a religious reason (*amr dīnī*), for a worldly reason (*amr dunyawī*), or arbitrarily (*mujaraddᵃⁿ ʿan al-qaṣd*). Al-Suyūṭī also draws a distinction between the jurist and layperson, permitting the latter to switch schools for a worldly reason and restricting school boundary-crossing by the jurist to evidential reasons (*tarjīḥ*).[2] The worldly reason is what we will call *pragmatic school boundary-crossing*, whereas the religious reason, we call *evidential school boundary-crossing*, since it is typically based on the assessment of evidence, known as *tarjīḥ*. I will use the more general term *pragmatic eclecticism* to refer to the selection of doctrines of jurists, whether belonging to other schools, referred to as *pragmatic school boundary-crossing* or to the same school.

The terms used here by al-Suyūṭī, *amr dīnī* and *amr dunyawī*, were not often used in juristic discourse. In the juristic literature, when school boundary-crossing (*al-intiqāl bayna al-madhāhib*) is motivated by pragmatic considerations, the term used by jurists was *tatabbuʿ al-rukhaṣ*, meaning "pursuing less stringent juristic views," which is similar to al-Suyūṭī's *amr dunyawī*. *Rukhṣa* in the phrase "*tatabbuʿ al-rukhaṣ*" means an exemption from a rule or obligation. There are two types of *rukhṣa* in the legal literature. The first is an exemption from a rule within the school doctrine, such as the permission to abstain from fasting during the month of Ramaḍān in the event of illness. The second type, as in *tatabbuʿ al-rukhaṣ*, refers to pursuing a less stringent view, usually from another school.[3] The term *talfīq* refers to a type of *tatabbuʿ al-rukhaṣ* in which views belonging to two or more jurists are

---

[2] ʿAbd al-Wahhāb al-Shaʿrānī, *al-Mīzān,* 2 vols. (Cairo: al-Maṭābiʿ al-Amīriyya, 1900), 1:35-6.

[3] *Talfīq* refers to a complex form of *tatabbuʿ al-rukhaṣ* in which there is a combination of two different schools in the same transaction. For a good discussion of *talfīq* and debates over its validity prior to the modern period, see Lutz Wiederhold, "Legal Doctrines in Conflict the Relevance of *Madhhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād*," *Islamic Law and Society* 3:2 (1996): 234-304, at 247; Birgit Krawietz, "Cut and Paste in Legal Rules: Designing Islamic Norms with Talfiq," *Die Welt Des Islams* 42:1 (2002): 3-40; ʿAbd al-Raʾūf b. Nūr al-Dīn al-Munāwī, *Fayḍ al-Qadīr*, 6 vols., 2nd ed. (Beirut: Dār al-Maʿrifa, 1972), 1:209-12.

put together to create one complex form of *tatabbuʿ al-rukhaṣ*. Both *tatabbuʿ al-rukhaṣ* and *talfīq* fall under my conceptual category *pragmatic eclecticism*.[4]

In al-Suyūṭī's terminology, the religious reason (*amr dīnī*) for choosing one juristic view over another is achieved through preponderance (*tarjīḥ*), in which an evaluation of evidence is conducted to determine which view—either within one school or across school boundaries—should be adopted.[5] This school boundary-crossing terminology—whether based on pragmatic or evidential considerations—is contrasted with the position, known as *tamadhhub*, that only one school should be followed in all transactions regardless of evidential or pragmatic considerations. This position was adopted by some of the opponents of pragmatic eclecticism.

School boundary-crossing, as described above, assumes that jurists or laypeople are operating within the context of *taqlīd* (literally "imitation"), i.e. the adoption of a juristic view without a direct interrogation of the textual sources. This term is frequently juxtaposed in the primary literature with *ijtihād*, whereby the jurist directly examines the textual sources.[6] However, we need not think of *taqlīd* and *ijtihād* in a strictly binary fashion, but rather as a continuum. On one side of this continuum lies pragmatic eclectic *taqlīd*, in which there is no direct discursive invocation of the authority of the textual sources, but simply a reference to juristic views. On the *taqlīd* side, but closer to *ijtihād* than

---

[4] In the modern period, the term *takhayyur* came to occupy the semantic space dedicated to *tatabbuʿ al-rukhaṣ*, although in premodern juristic discourse, it was used to refer to a choice that is not motivated by pragmatic considerations. On those terms, see further Ahmed Fekry Ibrahim, "School Boundaries and Social Utility in Islamic Law: The Theory and Practice of *Talfīq* and *Tatabbuʿ al-Rukhaṣ* in Egypt" (PhD Dissertation, Georgetown University, 2011), 28-37.

[5] For more on *tarjīḥ* and the similar process of *taṣḥīḥ*, see Wael B Hallaq, *Authority, Continuity, and Change in Islamic Law* (Cambridge, UK: Cambridge University Press, 2001), 147-66; Sherman Jackson, *Islamic Law and the State: The Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (New York: E.J. Brill, 1996), 83-9; Ulrich Rebstock, "A Qāḍī's Errors," *Islamic Law and Society* 6:1 (1999): 1-37, at 10-11.

[6] For discussions of *taqlīd* and *ijtihād*, see Mohammad Fadel, "The Social Logic of *Taqlīd* and the Rise of the *Mukhtaṣar*," *Islamic Law and Society* 3:2 (1996): 193-233, at 193-6; Sherman Jackson, *Islamic Law and the State: the Constitutional Jurisprudence of Shihāb al-Dīn al-Qarāfī* (New York: E.J. Brill, 1996), 73-96; Wael B. Hallaq, "Was the Gate of Ijtihad Closed?," *International Journal of Middle East Studies* 16:1 (1984): 3-41.

pragmatic eclectic *taqlīd*, lies the evidential assessment of different views with reference to the sources of the law (*tarjīḥ*), but within the methodological parameters of the eponyms and in a manner that does not depart from the largely pre-determined juristic options set by the eponyms and the schools' leading authorities.

The question again is: How can we situate al-Shaʿrānī within the theoretical debate about the social role of legal pluralism? This context was overlooked by Schacht, notwithstanding his correct observation that the four Sunni schools of law were accepted as equally orthodox. He cites a saying from *al-Fiqh al-Akbar* of Abū Ḥanīfa to the effect that "difference of opinion among the *umma* is a blessing (*raḥma*) from God." It is with this tradition of equal orthodoxy in mind that Schacht reads al-Shaʿrānī's *al-Mīzān al-Kubrā*, which, he says, "expresses the attitude underlying this tradition with monotonous regularity."[7]

Like Schacht, Pagani concludes that al-Shaʿrānī did not depart from the legal tradition and that his attitude was ultimately conservative.[8] In her important and insightful work on al-Shaʿrānī, Pagani argues that he reiterated an already well-established doctrine that was "remote from the idea of a codification on the basis of *talfīq*, which, for al-Shaʿrānī, as for jurists in general in the pre-modern period, is an invalid practice."[9] While I agree with Pagani's conclusions regarding al-Shaʿrānī's general attempt to create a harmonious synthesis between the legal and spiritual traditions and his valorization of *taqlīd*,[10] I disagree with the above statement because it posits a clear discontinuity between Ottoman juristic views and 19th and 20th century legal codification, which I have argued against elsewhere.[11]

Winter, who examined al-Shaʿrānī's Sufi and juristic work, also sees his opinions as not deviating from positions taken before his time. In his view, al-Shaʿrānī made more important contributions to jurisprudence than to Sufism. Winter goes further, saying that although al-Shaʿrānī's theory regarding the equality of the four schools is bold and original, it failed to have a deep impact on Islamic law because he

---

[7] *EI²*, s. v. Ikhtilāf (J. Schacht).
[8] Pagani, "The Meaning of the *Ikhtilāf al-Madhāhib*," 177-212, at 194.
[9] Ibid., 194.
[10] Ibid., 181, 210-2.
[11] Ibrahim, "School Boundaries and Social Utility in Islamic Law."

lacked the authority of a jurist. Another reason he cites for al-Shaʿrānī's failure to robustly influence Islamic law is the cultural decline of the period, which doomed to failure any reformist attempts.[12]

The premises of historians on the work of al-Shaʿrānī may be summarized as follows:

1. According to well-established Sunni legal theory that predated him and continued all the way up to the modern period, the search for the less or more stringent opinions from a different school is permitted so long as there is no *talfīq*.
2. Al-Shaʿrānī simply reiterated this view, although his originality does not fully escape Winter.[13]
3. There was a clear rupture between the modern period, in which *talfīq* was introduced for the first time, and the premodern period, in which only *takhayyur* was permitted.

In this essay, I will refute the first two assumptions. Elsewhere, I have shown that most modern codification was achieved, not through *talfīq*, but through the traditional process of *pragmatic eclecticism* known as *tatabbuʿ al-rukhaṣ* and that there was no consensus over the prohibition of *talfīq* in the Ottoman period. It follows that the main techniques used in modern codification were ultimately traditional.[14]

Transformations in Mamluk and Ottoman Court Practice

Before we discuss the debate that was taking place in al-Shaʿrānī's time, a brief overview of the legal transformations of his time is in order.

Prior to the Ottoman conquest of Egypt in 1517, the legal situation in Egypt was pluralistic, with the four schools each having a chief judge representing them. This institutionalization of Sunni legal pluralism was part of an incremental, evolutionary process that predated the Mamluks and corresponded roughly to the stabilization of *taqlīd*. In 525/1130-1, the Fatimid *wazīr* Ibn al-Afḍal appointed four chief

---

[12] Michael Winter, *Society and Religion in Early Ottoman Egypt: Studies in the Writings of ʿAbd al-Wahhāb al-Shaʿrānī* (New Brunswick, N.J: Transaction Books, 1982), 5, 241.

[13] Ibid., 241.

[14] Ibrahim, "School Boundaries and Social Utility in Islamic Law."

judges: Mālikī, Shāfiʿī, Ismāʿīlī, and Imāmī. Despite the clear political motivation behind the appointment of the Imāmī chief judge,[15] a pragmatic motivation in which the other schools were used to provide flexibility through their substantive rulings cannot be ruled out in the case of the other chief judges. Other important changes that contributed to this institutional development include the establishment in 641/1243-4 of professorships for each of the four schools of law under the Ayyubids and the completion of the Ṣāliḥiyya *madrasa* in 648/1250. Additionally, before his decision to appoint four chief judges in Cairo, Baybars ordered the Shāfiʿī chief judge to choose deputies (*nuwwāb*) from the other three schools.[16]

   The culmination of this reform movement was Baybars' decision to appoint four chief judges in Cairo in 663/1265, a move whose objective—as Rapoport rightly argues—was to provide flexibility to the legal system.[17] A few decades before Baybars' decision, Ibn ʿArabī described in *al-Futūḥāt al-Makkiyya*, his magnum opus, penned between 599/1201 and 629/1231, what he saw as a disturbing phenomenon. Some of the jurists of his time were trying to prevent laypeople from following the *rukhaṣ* of the schools, and urging them to abide by one school only. In his defense of the practice of laypeople, Ibn ʿArabī gives a specific example of a Mālikī *muftī* who prevented a Mālikī layperson from following the Shāfiʿī school. Ibn ʿArabī was not alone in his permission of pragmatic eclecticism. Drawing upon the theological-legal debate of the multiplicity/unity of truth, the Shāfiʿī ʿIzz al-Dīn b. ʿAbd al-Salām (d. 660/1262) argues that whether laypeople followed the *rukhaṣ* or the more stringent views (*ʿazāʾim*), both decisions fall within the purview of truth.[18]

---

[15] For a discussion of the political motivations behind the Fatimid event, see Adel Allouche, "The Establishment of Four Chief Judgeships in Fāṭimid Egypt," *Journal of the American Oriental Society* 105:2 (1985): 317-20.

[16] Joseph H. Escovitz, "The Establishment of Four Chief Judgeships in the Mamlūk Empire," *Journal of the American Oriental Society* 102:3 (1982): 529-31.

[17] Yossef Rapoport, "Legal Diversity in the Age of *Taqlīd*: The Four Chief *Qāḍīs* Under the Mamluks," *Islamic Law and Society* 10:2 (2003): 210-28, at 226-8.

[18] ʿIzz al-Dīn b. ʿAbd al-Salām, *Kitāb al-Fatāwā*, ed. ʿAbd al-Raḥmān Ibn ʿAbd al-Fattāḥ, 1st ed. (Beirut: Dār al-Maʿrifa, 1986), 150-4.

The debate between supporters and opponents of pragmatic eclecticism abounds in references to practice, indicating that the deep institutional changes of the Mamluk period were a response to the needs of laypeople and a desire to institutionalize a pragmatic system of school boundary-crossing. These views of Ibn ʿArabī and ʿIzz al-Dīn b. ʿAbd al-Salām represent an articulation of a new strand of thought to counter the more established view that prohibits pragmatic school boundary-crossing. Baybars' decision constitutes not only an intervention in favor of one side of the debate, but also a legitimization and facilitation of existing practice, as Ibn ʿArabī's account indicates.

After their conquest of Egypt in 1517, the Ottomans embarked on a process of legal reform intended to bring about homogeneity and conformity, through the erosion of the authority of the *madhāhib* and the adoption of an official *madhhab.* The Ottomans pursued a policy of judicial purges of local judges, notaries and witnesses. The lucky few members of the local judiciary who were not dismissed saw their jurisdiction and power diminishing vis-à-vis Ottoman judicial officials.[19] This was an attempt to reverse Mamluk legal pluralism, which provided flexibility to the system of *taqlīd*. This pluralistic Sharīʿa was replaced with an "antagonistic" Ottoman Sharīʿa, to borrow Meshal's term, in which the Ḥanafī school was at the top of the hierarchy. Legal pluralism was replaced with a brief attempt at legal homogenization intended to unify the legal system under the Ḥanafī *madhhab.*[20] This tendency to minimize or completely do away with the influence of the other three *madhāhib* is attested by the suspension, albeit rare, of the non-Ḥanafī schools and the dismissal or demotion of non-Ḥanafī chief judges. According to Meshal, the governor's order of 1520 to permit larger numbers of non-Ḥanafī deputies (*nāʾibs*) suggests that the policy of

---

[19] Reem Meshal, "Antagonistic Sharīʿas and the Construction of Orthodoxy in Sixteenth-Century Ottoman Cairo," *Journal of Islamic Studies* 21:2 (2010): 183-212, at 183-5; For a discussion of Sulaymān the Magnificent's messianic image, his image as a just ruler, and his attempt to establish consistency, codification, and regularization, see Cornell H. Fleischer, "The Lawgiver as Messiah: The Making of the Imperial Image in the Reign of Süleymân," in *Soliman Le Magnifique Et Son Temps* (Paris: Ecole du Louvre, 1992), 159-77, at 165-71.

[20] For a good discussion of Ottoman legal reforms, see Meshal, "Antagonistic Sharīʿas," 183-212, at 183-9.

excluding local members of the judiciary was untenable.[21] Those policies suggest that there was an attempt at Ḥanafization on the part of the Ottomans, but whether or not they intended to effect a long-term abolition of the other schools is not clear.

In the final tally, Ottoman Ḥanafization, which also entailed the Ottomanization of Egyptian legal institutions, did not fully succeed in ridding the system of its local Sharīʿa: the Sharīʿa that the Mamluks opted for when they sided with the eclectic practice of jurists and the position of the proponents of pragmatic eclecticism. I have shown elsewhere that by the end of the 17th and beginning of 18th-century in Cairo and Bulāq, approximately 75% of court cases in a sample of 1001 cases were brought to Ḥanafī judges. The rest were brought to non-Ḥanafīs. The choice of school was motivated by pragmatic considerations, rather than school affiliation.[22] In other words, the Ottoman reforms did not succeed in doing away with local legal pluralism. But Ḥanafism retained an official status that guaranteed that the majority of cases were brought to Ḥanafī judges, and Ottoman Ḥanafīs sat at the top of the legal hierarchy.

The Ottoman reforms riled not only the local juristic community, but also laypeople who saw occasional disruptions in their ability to navigate the legal system. A reference in *Quḍāt Miṣr* by Aḥmad b. Aḥmad al-Damīrī (d. 1030-5/1621-5) drives home this point. Al-Damīrī describes the Ottoman judge Muḥammad Shāh b. Ḥazm, who arrived in Cairo in 1563 as rigid and unfamiliar with Egyptians, who were accustomed to lenience (*ṭubiʿū ʿalā al-līn*).[23] Muḥammad Shāh b. Ḥazm offers a sharp contrast to Muḥammad b. Muḥammad b. Ilyās, a judge who left office in 1570, having received certificates (*ijāzāt*) from towering authorities in the four schools, including Shihāb al-Dīn al-Futūḥī al-Ḥanbalī (d. 972/1564), and Shihāb al-Dīn Aḥmad b. Aḥmad al-Ramlī al-Shāfiʿī (d. 957/1550).[24] Muḥammad b. Muḥammad b. Ilyās's appreciation for the four schools and his involvement in juristic

---

[21] On some of the policies pursued by the Ottomans in the early years of the conquest, see ibid., 183-212, at 190-7.

[22] Ibrahim, "School Boundaries and Social Utility in Islamic Law," 120-64.

[23] Aḥmad b. Aḥmad Damīrī, *Quḍāt Miṣr*, ed. ʿAbd al-Rāziq ʿAbd al-Rāziq ʿĪsā and Yūsuf Muṣṭafā Maḥmūdī, 1st ed. (Cairo: al-ʿArabī li'l-Nashr, 2000), 307.

[24] Ibid., 313-17.

discussions with the local *'ulamā'* earned him al-Damīrī's praise and admiration.[25] His attitude towards the other schools becomes even clearer when he praises another judge for his knowledge of the four schools (*'alim^{an} bi'l-madhāhib al-arba'a*).[26] Al-Damīrī throws figures like Muḥammad b. Muḥammad b. Ilyās into sharp relief against champions of Ḥanafization such as 'Abd al-Wahhāb b. Ibrāhīm al-Rūmī al-Ḥanafī, who drew the ire of al-Damīrī for purging the courts of local judges and replacing them with Ottoman Ḥanafīs in 1600.[27]

Al-Sha'rānī supported the local, Mamluk approach to law against Ottoman Ḥanafization, in the same way that he gave preference to local saints over their Anatolian counterparts.[28] In re-engaging this old debate, he was attempting to provide a decisive position by advancing a theory of legal pluralism. In light of the above discussion, al-Sha'rānī's work should be read with two contexts in mind: the Ottoman legal reform, and the debate over the validity of pragmatic eclecticism, to which we turn now.

The Debate over the Pragmatic Selection of Juristic Views

While it is true that *ikhtilāf* was generally accepted in Sunnism as a fact of life, the pragmatic attitude towards legal pluralism to facilitate people's transactions was never indisputably accepted. Crossing school boundaries because the evidence of another school is more compelling has generally been accepted by most jurists, but crossing school boundaries for pragmatic reasons has always been subject to debate.[29] As we saw above, the debate was not about whether or not the four schools were equally orthodox. The central question was rather: if the four schools are equally orthodox, can a change of school in a single transaction, rather than the holistic change in all transactions, be motivated

---

[25] Ibid., 320-1.

[26] Ibid., 321-2.

[27] Ibid., 213-20.

[28] On al-Sha'rānī's adoption of the notion of the primacy of local saints, see Adam Sabra, "Illiterate Sufis and Learned Artisans: The Circle of 'Abd al-Wahhāb al-Sha'rānī," in *Le Développement Du Soufisme En Égypte à L'époque Mamelouke*, ed. Richard J. McGregor and Adam Sabra (Cairo: Institut français d'archéologie orientale, 2006), 167.

[29] Taqī al-Dīn al-Subkī, *Fatāwā al-Subkī,* 2 vols. (Beirut: Dār al-Ma'rifa, n.d.), 1:147-8.

by pragmatic considerations? This debate became acute beginning in the 11th century and continued well into the modern period.

Forbidding the pragmatic choice of forum in legal transactions and instead imposing an evidential assessment is part of an approach to law that attempts to rid the legal system of human interpretation and pragmatic eclecticism. Purists tend to reject juristic accretions that do not conform with strict textualism. It is important to note that the term "purists" should not be taken as a coherent representation of certain jurists or periods, since the same person may hold inconsistent positions on different issues. Rather, the term should be taken to refer to general, sometimes incoherent or contradictory tendencies within the legal tradition.

The early appearance of two Prophetic traditions that seem to support pragmatic eclecticism may explain the perception common among legal historians that the issue was not subject to debate. The first says, "Differences among the *umma* are a blessing" (*ikhtilāfu ummatī raḥma*), hereinafter the *ikhtilāf ḥadīth*. A version of the first tradition is mentioned in *al-Fiqh al-Akbar*, which is attributed to Abū Ḥanīfa al-Nuʿmān b. Thābit (d. 150/767), albeit not yet as a Prophetic tradition.[30]

The second tradition, which is also mentioned in *al-Fiqh al-Akbar*, says, "My companions are like stars, whomever you follow will guide you aright" (*aṣḥābī kaʾl-nujūmi bi-ayyihim iqtadaytum ihtadaytum*), and is referred to as the Companions *ḥadīth*. In the view of Abū Ḥanīfa and his commentator, Abū Manṣūr Muḥammad al-Ḥanafī al-Samarqandī (d. 333/944), the context of the Companions *ḥadīth* is not related to pragmatic eclecticism. It is cited as a defense of the Companions against Shīʿī attacks, rather than to promote a notion of juristic diversity.[31]

---

[30] Nūr al-Dīn Mullah ʿAlī Qārī, *al-Asrār al-Marfūʿa fiʾl-Akhbār al-Mawḍūʿa*, ed. Muḥammad b. Luṭfī al-Ṣabbāgh, 2nd ed. (Riyadh: al-Maktab al-Islāmī, 1986), 108-10; Muḥammad Nāṣir al-Albānī, *Silsilat al-Aḥādīth al-Ḍaʿīfa waʾl-Mawḍūʿa wa-Atharihā al-Sayyiʾ fiʾl-Umma*, 14 vols., 1st ed. (Riyadh: Maktabat al-Maʿārif, 1992), 1:141-8.

[31] A close analysis of the text shows that the attribution of the Companions *ḥadīth* in al-Samarqandī's commentary on *al-Fiqh al-akbar* is ambiguous. It could be argued that it was attributed to ʿAlī b. Abī Ṭālib (d. 40/661), since al-Samarqandī uses "peace be upon him," (*ʿalayhī al-salām*) to refer to the person to whom the Companions *ḥadīth* is attributed, the same honorific used by al-Samarqandī to refer to ʿAlī in the previous line. The honorific reserved for the Prophet in al-Samarqandī's commentary is "peace and prayer be upon him"

Despite the early non-juristic context of the Companions *ḥadīth*, observed in *al-Fiqh al-Akbar*, it was used by later jurists to imply that utility is a factor in the choice of juristic views in the accepted environment of *ikhtilāf*. This later understanding of the Companions *ḥadīth* never gave rise to consensus over the pragmatic use of legal diversity. In fact, the authenticity of these traditions was itself contested throughout Islamic history.[32]

It seems that the Companions *ḥadīth* was unknown or rejected by Muḥammad b. Idrīs al-Shāfiʿī (d. 204/820), who does not mention it in his discussion of *ikhtilāf* in *al-Risāla*. He says that there are forbidden and permitted types of disagreements, citing the Qurʾān to condemn disagreement when textual evidence supports one view. Nowhere in his discussion does he mention either of the two traditions. He also argues that when the Companions disagree, one should search the view that corresponds to the textual sources, consensus or analogy, thus adopting a non-pragmatic view of legal diversity.[33] At no point does he promote the idea of pragmatic selection of forum.

A combined version of the two traditions appears in another early source, *Kitāb al-Ṭabaqāt al-Kabīr* of Ibn Saʿd (d. 230/845), where the Follower al-Qāsim b. Muḥammad b. Abī Bakr al-Ṣiddīq is presented as the progenitor of the tradition, "*Ikhtilāf* among the Companions of the Messenger of God was a blessing (*raḥma*) to people."[34] It will be noted that the maxim is not attributed directly to the Prophet. Note also that the "differences" are restricted to those among the Companions and, as in other versions, it is not clear what type of difference is intended. ʿUmar b. ʿAbd al-ʿAzīz (d. 101/720) is also cited in *Kitāb al-Ṭabaqāt al-Kabīr* as saying that he prefers differences among the Companions over red camels (*ḥumr al-niʿam*).[35]

(ʿalayhī al-ṣalātu waʾl-salām). See al-Nuʿmān b. Thābit Abū Ḥanīfa, *Sharḥ al-Fiqh al-Akbar*, ed. ʿAbdullah b. Ibrāhīm al-Anṣārī (Hayderabad: Majlis Dāʾirat al-Maʿārif al-Niẓāmiyya, 1903), 10-11.

[32] Qārī, *al-Asrār al-Marfūʿa*, 108-10; al-Albānī, *Silsilat al-Aḥādīth al-Ḍaʿīfa*, 1:141-8.

[33] Muḥammad b. Idrīs al-Shāfiʿī, *al-Risāla* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1939), 560-98.

[34] Muḥammad Ibn Saʿd, *Kitāb al-Ṭabaqāt al-Kabīr*, ed. ʿAlī Muḥammad ʿUmar, 10 vols., 1ˢᵗ ed. (Cairo, Egypt: Maktabat al-Khānjī, 2001), 7:188.

[35] The reference to "red camels" signifies preciousness for they were considered the most valuable and rare color of camels by pre-Islamic Arabs. Ibid., 7:371.

The Shāfiʿī Abū Bakr al-Bayhaqī (d. 458/1066) says that the Companions *ḥadīth* is weak.[36] The Mālikī Ibn ʿAbd al-Barr (d. 463/1070) rejects it on the grounds of both content and chain of transmission, but again the *ikhtilāf ḥadīth* is absent from the discussion.[37] The Ẓāhirī jurist Ibn Ḥazm (d. 456/1063) refers to the *ikhtilāf ḥadīth* as a maxim with which he disagrees and rejects the Companions *ḥadīth* on the grounds of both content and transmission. He argues that since the Prophet pointed out mistakes in understanding the Qurʾānic text made by some of the Companions, including Abū Bakr and ʿUmar, it is impossible that the Prophet would command us to follow them in all decisions. After all, he explains, not all stars can guide people on every trip.[38] Muḥyī al-Dīn Abū Zakariyyā Yaḥyā al-Nawawī (d. 676/1278) cites the Shāfiʿī Abū Sulaymān al-Khaṭṭābī (d. 388/998) as relating the *ikhtilāf ḥadīth*, which, he says, was not accepted by al-Jāḥiẓ or Isḥāq b. Ibrāhīm al-Mawṣilī.[39]

What is important for this study is that the existence of these two traditions never led to an agreement on using the diversity of opinions to facilitate legal and ritual practices. On the contrary, reports attributed to some of the eponyms of the four Sunni schools indicate that they were against pragmatism in the selection of juristic views. For instance, the eponym of the Ḥanbalī school, Aḥmad b. Ḥanbal (d. 241/855), is reported on the authority of his son Abdullāh to have said that if someone follows the people of Kūfa on date wine (*nabīdh*), the people of Medina on music (*samāʿ*), and the people of Mecca on *mutʿa* marriage, he is a sinner (*fāsiq*).[40] Most early jurists were decidedly against this

---

36) Abū Bakr al-Bayhaqī, *al-Madkhal Ilā al-Sunan al-Kubrā*, ed. Muḥammad Ḍiyāʾ al-Raḥmān al-Aʿẓamī, 2 vols., 2nd ed. (Riyadh: Maktabat Aḍwāʾ al-Salaf, 1999), 1:146-9.
37) Yūsuf Ibn ʿAbd al-Barr, *Jāmiʿ Bayān al-ʿIlm wa-Faḍlih,* 2 vols. (Cairo: Idārat al-Ṭibāʿa al-Munīriyya, n.d.), 1:85-92.
38) Abū Muḥammad ʿAlī b. Aḥmad b. Saʿīd Ibn Ḥazm, *Al-Iḥkām Fī Uṣūl al-Aḥkām*, ed. Aḥmad Muḥammad Shākir, 8 vols., 1st ed. (Beirut: Dār al-Āfāq al-Jadīda, 1979), 5:64-6.
39) Muḥyī al-Dīn Abū Zakariyyā Yaḥyā b. Sharaf al-Nawawī, *Ṣaḥīḥ Muslim bi-Sharḥ al-Nawawī*, 18 vols., 1st ed. (Cairo: al-Maṭbaʿa al-Miṣriyya bi'l-Azhar, 1930), 11:91-2.
40) Abū Bakr al-Khallāl, *Kitāb al-Amr Bi'l Maʿrūf Wa'l Nahī ʿan al-Munkar*, ed. Mashhūr Ḥasan Maḥmūd Salmān and Hishām b. Ismāʿīl al-Saqqā, 1st ed. (Beirut: al-Maktab al-Islāmī, 1990), 87; Aḥmad Ibn Ḥanbal, *Masāʾil al-Imām Aḥmad Ibn Ḥanbal Riwāyatu Ibnihi ʿAbdullāh Ibn Aḥmad*, ed. Zuhayr al-Shāwīsh, 1st ed. (Beirut: al-Maktab al-Islāmī, 1981), 449.

practice. They saw the job of the *muftī* to seek the opinion most likely to be correct. I have shown elsewhere that there was very little juristic support for this practice prior to the 13th century. Authorities belonging to different schools such as Ibn Ḥazm (d. 456/1063), al-Juwaynī (d. 478/1085), al-Ghazālī (d. 505/1111), Ibn Qudāma (d. 620/1223), and al-Nawawī (d. 676/1278) were opposed to the practice. Some even claimed a consensus against the pragmatic selection of less stringent juristic views. It was not until the early 13th century that such a consensus was clearly challenged.[41]

In the 13th century, we start seeing scholars supporting the practice of pragmatic forum switching. On a practical level, however, forum switching was exercised by judges and by *muftīs*, leading to much controversy among jurists. Ibn ʿArabī (d. 638/1240) was one of the earliest voices trying to reconcile legal practice with legal theory. He was an acerbic critic of contemporary jurists who criticized people for following the *rukhaṣ* of the schools, and he urged them to abide by one school only. He explains that the jurists of his time regarded the pursuit of the *rukhaṣ* of other schools as a manipulation of religion, an attitude that he decries as the epitome of ignorance. Ibn ʿArabī invokes the concept of diversity as *raḥma*, without referring to the *ikhtilāf ḥadīth*, saying that God allowed this *khilāf* as an act of mercy for His subjects.[42] He does not place any restrictions on people who wish to seek a less stringent juristic opinion, treating *rukhaṣ* as a gift from God that should always be pursued.[43]

Other scholars permitted such pragmatism in limited circumstances. The Shāfiʿī ʿIzz al-Dīn b. ʿAbd al-Salām (d. 660/1262) supported crossing school boundaries by laypeople so long as the ruling did not invalidate a judge's decision (*mimmā lā yunqaḍu fīhi al-ḥukm*), that is to say, so long as the ruling did not violate a clear textual source, consensus or obvious analogy.[44]

---

[41] On early juristic attitudes towards pragmatic school boundary-crossing, see Ibrahim, "School Boundaries and Social Utility in Islamic Law," 46-50.

[42] Muḥyī al-Dīn Ibn ʿArabī, *al-Futūḥāt al-Makkiyya,* 4 vols. (Cairo: Dār al-Kutub al-ʿArabiyya, n.d.), 1:392.

[43] Ibid., 2:685, 4:491.

[44] ʿIzz al-Dīn Ibn ʿAbd al-Salām, *Al-Qawāʿid al-Kubrā: Qawāʿid al-Aḥkām Fī Iṣlāḥ al-Anām*, ed. Nazīh Kamāl Ḥammād and ʿUthmān Jumʿa Ḍamīriyya, 2 vols. (Damascus: Dār al-Qalam, 2000), 1:273-5.

The Shāfiʿī Taqī al-Dīn al-Subkī (d. 683/1284) argues that if the motivation behind switching schools is the pursuit of a *rukhṣa* because of something a person needs (*ḥāja*) or because of a necessity (*ḍarūra*), he/she is allowed to choose the other school's opinion, but it is forbidden to follow the more lenient views on a regular basis.[45] The debate over the pragmatic use of legal pluralism was not yet resolved in the time of the Shāfiʿī jurist Badr al-Dīn Muḥammad al-Zarkashī (d. 794/1392). He cites the uncompromising view that outright forbids pragmatic school boundary-crossing, as well as the view that allows it only in cases of necessity (*ḍarūra*).[46]

Al-Zarkashī argues that *ittibāʿ al-rukhaṣ* is preferred (*maḥbūb*) because the Prophet said, "God likes [people] to follow His *rukhaṣ*." Then he cites the argument that one should accept *ittibāʿ al-rukhaṣ*, since it is widely accepted that we do not know the one correct *mujtahid*. He also refers to the practice of an unnamed Shāfiʿī shaykh, who directed laypeople to the least stringent school for their different transactions. But al-Zarkashī's standards are stricter. He argues that permission should not be granted without a restriction, namely that the *muftī* must examine the state (*ḥāl*) of the *mustaftī*. For instance, according to al-Zarkashī, if a person is stricken with doubts and desperation, he should be given the *rukhṣa* lest he may abandon the divine law (*sharʿ*) altogether. In addition to this restriction, al-Zarkashī cites a view held by al-Subkī—albeit without identifying him—according to which, when the selection of a less stringent view becomes a habit, an indication that it exceeds the restriction of need or necessity, selecting a less stringent view is not permitted.[47]

In the midst of this debate, in 780/1378 the Shāfiʿī jurist ʿAbd al-Raḥmān al-Dimashqī wrote *Raḥmat al-Umma fī Ikhtilāf al-Aʾimma*, in which, he explains, he left out the proofs for the different views and their arguments (*mujarradaᵗᵘⁿ ʿan al-dalīli waʾl-taʿlīl*) in order to make

---

[45] Al-Subkī, *Fatāwā al-Subkī*, 1:147-8.

[46] Badr al-Dīn Muḥammad al-Zarkashī, *al-Manthūr fiʾl-Qawāʿid*, ed. Taysīr Fāʾiq Aḥmad Maḥmūd and ʿAbd al-Sattār Abū Ghudda, 3 vols., 1st ed. (Kuwait: Wizārat al-Awqāf waʾl-Shuʾūn al-Islāmiyya, 1982), 1:398.

[47] Badr al-Dīn Muḥammad al-Zarkashī, *al-Baḥr al-Muḥīṭ Fī Uṣūl al-Fiqh*, ed. ʿAbd al-Qādir al-ʿĀfī and ʿUmar Sulaymān al-Ashqar, 6 vols., 2nd ed. (Kuwait: Wizārat al-Awqāf waʾl-Shuʾūn al-Islāmiyya, 1992), 6:319-27.

it accessible to those interested in memorizing only the views.[48] This practical guide served as a manual for practitioners with limited legal training. The basic knowledge provided to these practitioners by such a manual must have been used to proffer legal advice to laypeople trying to navigate the Sunni school system without paying much attention to the debates that preoccupied author-jurists.[49]

The above discussion situates the contributions of al-Dimashqī and al-Shaʿrānī in the larger context of the debate about pragmatic eclecticism. But that does not mean that both authors had similar objectives. An examination of al-Dimashqī's work shows that it is distinctly different from al-Shaʿrānī's *al-Mīzān*. Schacht's view that al-Dimashqī's work is derived from al-Dimashqī's *Raḥmat al-Umma* must be revised.[50] Such a claim detracts from the originality and importance of al-Shaʿrānī's work and assumes that the two works had similar objectives in mind, which is not at all the case. While al-Dimashqī's intention was to provide a practical guide without engaging the debate against such practice, al-Shaʿrānī's work was an attempt to provide a theoretical justification for legal practice by showing, through the use of Prophetic traditions, that all the views of the four schools are based on textual sources and should be accepted equally as part of the Sharīʿa. Al-Shaʿrānī then divides juristic views into two levels: one is lenient and therefore suitable for laypeople, the other stringent, to be used by the *ʿulamāʾ* and Sufis. Having contextualized the theoretical debate that preoccupied jurists before and during al-Shaʿrānī's time, I will now discuss his position on the different views in the debate, as well as the legal transformations that were taking place in his own time.

---

[48] ʿAbd al-Raḥmān al-Dimashqī, *Raḥmat al-Umma fī Ikhtilāf al-Aʾimma,* 2 vols. (Cairo: al-Maṭābiʿ al-Amīriyya, 1900), 1:1-3. This book is printed on the margin of al-Shaʿrānī's *al-Mīzān*.

[49] In the Ottoman period, similar works explicitly state their intention to help legal practitioners provide legal advice to laypeople regarding the different school doctrines since laypeople do not abide by a particular school. See Ibrahim, "School Boundaries and Social Utility in Islamic Law," 76-9.

[50] *EI²*, s. v. Ikhtilāf (J. Schacht).

Against Whom Did al-Shaʿrānī Write?

Al-Shaʿrānī wrote against the notion of the unity of truth that was embraced by almost the entire legal community of his time. He also wrote against three specific trends in legal thought regarding the relationship among the four Sunni schools of law: (1) purists who supported school boundary-crossing, but only on evidential grounds, i.e. when the choice is based on weighing the evidence of the different schools against one another;[51] (2) *ḍarūra*-pragmatists such as al-Subkī and al-Zarkashī who accepted choice of school based on utility in limited circumstances connected to need or necessity; (3) proponents of abiding by one school only in all transactions (*tamadhhub*) who, for either evidential or pragmatic reasons, were opposed to changing schools. The Ottoman legal authorities represented the third camp, as their Ḥanafization policies were oftentimes intended to limit people's transactions to one school. It is important to stress once more that these designations do not refer to clear ideological groups, but rather to different strands of thought that are characterized by overlapping and sometimes contradictory positions. The term "pragmatic" is not intended to refer to an author's *weltanschauung*, but simply to his position on this particular issue. In other words, al-Subkī and al-Zarkashī might be seen as taking a pragmatic approach on legal pluralism, but a non-pragmatic approach on another issue. A case in point is al-Ghazālī and al-Shāṭibī, who, despite their famous opposition to pragmatic eclecticism,[52] were the champions of the theory of public weal (*maṣlaḥa*).[53]

---

[51] The purist tendency is part of a larger approach to law, associated with the views of *ahl al-ḥadīth*, which tends to support a textual approach that aims to rid substantive law of accretions of juristic interpretations.

[52] Abū Isḥāq Ibrāhīm b. Mūsā al-Shāṭibī, *al-Muwāfaqāt*, 6 vols. (Riyadh: Dār Ibn ʿAffān, 1997), 5:77-8; Abū Ḥāmid al-Ghazālī, *al-Mustaṣfā Min ʿIlm al-Uṣūl*, ed. Ḥamza b. Zuhayr Ḥāfiẓ, 4 vols. (Medina: Sharikat al-Madīna al-Munawwara li'l-Ṭibāʿa, 1992), 4:154-5.

[53] For a good discussion of the roles played by al-Ghazālī and al-Shāṭibī in the development of the concept of *maṣlaḥa* in Islamic law, see Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden/Boston: Brill, 2010), 65-88, 247-333; Felicitas Opwis, "*Maṣlaḥa* in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12:2 (2005): 182-223, at 187-205.

The Unity of Truth

Al-Shaʿrānī disagreed with almost all of his contemporaries regarding the issue of unity or multiplicity of truth (*taʿaddud al-ḥaqq*). He states in no ambiguous terms that his predecessors have always mistakenly held that truth is one. He then cryptically reinterprets the famous Prophetic tradition about the *mujtahid* being rewarded once if he makes a mistake and twice if he does not. He explains that what is meant by a 'mistake' is failing to find a Prophetic tradition, rather than erring in understanding. He adds that if a *mujtahid* makes a mistake in Sharīʿa, he is acting outside of it and will not be rewarded at all.[54] For al-Shaʿrānī, the resulting multiple truths are predestined by God.[55]

By the 15th century, the overwhelmingly predominant view among jurists was that truth is one and therefore only one *mujtahid* is correct when there is *khilāf.* This view gave rise to two different approaches to law: one viewed the unity of truth as a motivation to seek out this one truth. This approach was usually associated with textually-minded purists who rejected the rulings of some of the schools on evidential grounds. Such a claim was supported by the view of some jurists that *ijtihād* was easy in their time because of the efforts of previous scholars, e.g., the traditionists who distinguished between reliable (*ṣaḥīḥ*) and unreliable (*saqīm*) traditions.[56] Proponents of this approach attacked not only school opinions that they did not recognize as based upon textual sources, but also the practices of laypeople who took advantage of legal diversity both in the realms of ritual and law proper.

Other proponents of the oneness of truth e.g., the Shāfiʿī al-Zarkashī, argued that since the correct *mujtahid* is unknown (*ghayr mutaʿayyan*), i.e. humans do not know which view is the correct one, for them, all

---

[54] ʿAbd al-Wahhāb al-Shaʿrānī, *Kashf al-Ghumma ʿan Jamīʿ al-Umma* (Cairo: Al-Maṭbaʿa al-Maymaniyya, n.d.), 8.

[55] Al-Shaʿrānī, *al-Mīzān*, 1:7.

[56] Some jurists held the view that *ijtihād* has become easier for later generations due to the efforts of previous scholars. While earlier jurists had to travel to distant lands to collect traditions, later jurists had at their disposal many works in which earlier traditionists collected authentic traditions. See, for example, Aḥmad b. Yaḥyā Wansharīsī, *Al-Miʿyār al-Muʿrib waʾl-Jāmiʿ al-Mughrib ʿan Fatāwā Ahl Ifrīqiyā waʾl-Andalus waʾl-Maghrib*, ed. Muḥammad Ḥajjī, 1st ed. 13 vols. (Rabat: Wizārat al-Awqāf waʾl-Shuʾūn al-Islāmīyah liʾl-Mamlaka al-Maghribiyya, 1981), 6:363-4.

legal opinions represent that truth.[57] This lack of certainty about which juristic view is correct is sometimes overlooked in some areas of *khilāf*, in which the proponents of the oneness of truth consider the evidence for one opinion to be strong enough to justify the dogmatic rejection of all other views. For instance, a person drinking date wine (*nabīdh*) without reaching the level of intoxication is lashed for drinking according to al-Zarkashī, even though Abū Ḥanīfa permits consumption of *nabīdh* as long as it does not lead to inebriation.[58]

Another example of the rejection of uncertainty about which juristic view is the one intended by God is related to the neighbor's right to pre-emption (*shufʿat al-jiwār*),[59] permitted by Ḥanafīs, but not by Shafiʿīs. In a clear rejection of school boundary-crossing, al-Zarkashī supports nullifying a contract concluded for a Shāfiʿī using *shufʿat al-jiwār*. He also accepts the legal view that allows one school to overrule another school's decision when the ruling contradicts a clear text, consensus or obvious analogy.[60] This rejection of uncertainty in some cases of *khilāf* led schools to attack each other's views. Such attacks were frequently directed against some well-established Ḥanafī opinions that were thought to contradict Prophetic traditions considered authentic by the other schools. Overlooking uncertainty in those cases has historically been a source of tension among the schools. In al-Shaʿrānī's time, this view was famous among some prominent jurists. It was a compromise that accepted epistemological indeterminacy in some cases but not in others.

The view that there are multiple truths had fallen out of favor by the Ottoman period. Proponents of this view were accused of espousing Muʿtazili ideas.[61] Al-Shaʿrānī challenges this view by treating all legal opinions as ordained by God. He argues that contradictory statements

---

[57] Al-Zarkashī, *al-Manthūr fi'l-Qawāʿid*, 1:93.

[58] Ibid., 2:136-7.

[59] In Ḥanafī law, the neighbor is given priority over outsiders to purchase an adjacent property for the fair market price (*shufʿat al-jiwār*).

[60] Al-Zarkashī, *al-Manthūr fi'l-Qawāʿid*, 2:69.

[61] Nūr al-Dīn Al-Samhūdī, "al-ʿIqd al-Farīd Fī Aḥkām al-Taqlīd," MS (Cairo, n.d.), fol. 17b, Dār al-Kutub 45 Uṣūl Taymūr; Ibrāhīm b. Ḥusayn b. Aḥmad b. Muḥammad b. Aḥmad Ibn Bīrī, "al-Kashf wa'l-Tadqīq Lī Sharḥ Ghāyat al-Taḥqīq," MS (Cairo, n.d.), fol. 6a–7b, MS Dār al-Kutub 403 Uṣūl Fiqh.

within the different sources of the law are deliberately created by God to appeal to people's varying levels of piety and strength. In every situation, there are two correct juristic views: one is lenient, the other strict. The lenient views are for those who are weaker in faith and the strict ones are for the select few. There is only one source for the divine law. Thus, when a person who is weak in faith and spirit draws water from that source, his/her water is as good as the water drawn by a saint.[62]

As a corollary to this argument, one does not have to seek the best juristic view, but rather the best fit between one of the views and one's own moral and physical state. By challenging the notion of the unity of truth, al-Shaʿrānī relieved the conscience of both legal practitioners and jurists from the temptation to seek out the one truth and reject all others. Thus, his promotion of the multiplicity of truth (*taʿaddud al-ḥaqq*) was a way to attack purists, *ḍarūra*-pragmatists, and supporters of *tamadhhub*, as we will see below.

Purists

Perhaps nothing is more explicit about the motivation behind writing the *Mīzān* than the introduction of al-Shaʿrānī's *Kashf al-Ghumma,* in which he claims that some laypeople have complained to him that their practice is sometimes rejected by jurists from other schools, who consider their prayer invalid. The laypeople's dilemma was that the scholars' rejection of their practice of mixing the different schools had created a deep sense of guilt and a fear that their ritual and legal transactions were not based on the divine law.[63]

The laypeople are cited by al-Shaʿrānī as saying that they do not know which of these jurists' opinions represents *the* truth. The questions raised by laypeople are similar to the discourse of some legists.[64] This situation created confusion and doubt in their minds about most of

---

[62] Al-Shaʿrānī, *al-Mīzān*, 1:10-2.

[63] Al-Shaʿrānī, *Kashf al-Ghumma*, 2-5.

[64] The tendency to prohibit pragmatic school boundary-crossing was supported by prominent jurists such as Ibn Ḥazm (d. 456/1063), Ibn ʿAbd al-Barr (d. 463/1070), al-Juwaynī (d. 478/1085), al-Ghazālī (d. 505/1111), Ibn Qudāma (d. 620/1223), Ibn al-Ṣalāḥ al-Shahrazūrī (d. 643/1245), al-Nawawī (d. 676/1278), Ibn Taymiya (d. 728/1328), and Abū Zakariyyā al-Anṣārī (d. 926/1519). See Ibrahim, "School Boundaries and Social Utility in Islamic Law," 46-52.

their legal and ritual practices. The laypeople claimed that they no longer knew whether their practice contradicted the Sharīʿa or not. This is why they needed a book containing all the proofs supporting the views of the four schools on different legal and ritual issues, as well as the clear traditions of the Prophet and the rightly-guided caliphs. They did not want this book to contain the views of *mujtahids*, which are not part of Sharīʿa, as some jurists impose their own imperfect understanding of the Sharīʿa on the doctrine of the eponyms and attribute it to them.[65]

The preaching of the purists seems to have succeeded in convincing some laypeople, who embraced their aversion to scholasticism and advocacy of textualism. These laypeople thought that they were required to seek the textual sources directly, rather than rely on juristic views. Al-Shaʿrānī rejects this view, arguing that it is sufficient for them to follow the jurists. Al-Shaʿrānī's interlocutors argued that laypeople are allowed to follow the views of jurists without seeking the textual sources only if the Prophetic traditions have disappeared, leaving behind only juristic views. Again, al-Shaʿrānī rejects this position, adding that even in the presence of Prophetic traditions, the views of *mujtahidūn* are sufficient since they are directly derived from the Sharīʿa.[66]

Al-Shaʿrānī's lay interlocutors articulated the purist view that it is necessary for laypeople to seek textual evidence for *fatāwā* as an attempt to reach God's law.[67] This view seeks to purge jurisprudence of juristic accretions that are not based on textual sources. For some purists, this is a form of *ijtihād* for the layperson who, according to this view, must always demand textual evidence for any *fatwā* he/she receives.[68] It was meant to be a precaution against non-textual juristic opinions. This responsibility placed on the shoulder of laypeople was burdensome. It

---

[65] Al-Shaʿrānī, *Kashf al-Ghumma*, 2-5.

[66] Ibid.

[67] Ibid.

[68] Incidentally, this same notion can be seen very clearly in the writings of the renowned 18th-century Yemeni revivalist al-Shawkānī, whose definition of *ijtihād* as practiced by laypeople emphasizes the necessity of demanding evidence from the *muftī*. According to al-Shawkānī, people should not follow the opinions of *mujtahids* but the transmission (*riwāya*) they provide from the textual sources. Muḥammad b. ʿAlī b. Muḥammad al-Shawkānī, *Irshād al-Fuḥūl Ilā Taḥqīq al-Ḥaqq Min ʿIlm al-Uṣūl*, 1st ed. (Cairo: Dār al-Fikr, 1937), 245-70.

is not an option for them to dedicate their lives to the pursuit of knowledge to make their own legal decisions. They must provide for their children with their own work rather than do what jurists do, which is to consume other people's "filth and alms" when they study in mosques.[69] Al-Shaʿrānī's defense of laypeople and his exposition of their refusal to follow the path of the jurists fit in well with the larger phenomenon of what Adam Sabra calls "everyday saints," i.e., illiterate Sufis and learned artisans. These saints shunned ostentatious forms of Sufism in favor of a "quiet" Sufism characterized by an emphasis on work.[70] According to al-Shaʿrānī, laypeople can focus on their daily work and not concern themselves with the claims of purists, since all school views are within the realm of Sharīʿa.

Although al-Shaʿrānī opposes the purist tendency, he shares some of its premises, such as preference for traditions over opinion (*ra'y*) and opposition to scholasticism. In his view, a jurist does not become an heir to the Prophet through deduction (*istinbāṭ*) and personal opinion, but rather through learning the Sunnah.[71] This emphasis on the Prophetic tradition and aversion to scholasticism, in some ways, united the Sufis and purists against the "traditional" *ʿulamā'*, although, to be sure, the lines demarcating those categories were often blurred. Indeed, al-Shaʿrānī himself was both a Sufi and a respected member of the *ʿulamā'*. We can see in the opposition to scholasticism and focus on *ḥadīth* what is to become an important emphasis of 18th-century revivalism. Al-Shaʿrānī's legal work shows that the tensions between juristic scholasticism and strict textualism were a topic of intense debate throughout the Ottoman period.[72]

Al-Shaʿrānī's preference for *ḥadīth* over juristic scholasticism did not lead him to a search for the one "correct" textually-based view within the four schools through an examination of the authenticity of the Prophetic traditions. Instead, he explains, the opinion of traditionists

---

[69] Al-Shaʿrānī, *Kashf al-Ghumma*, 3.

[70] Sabra, "Illiterate Sufis and Learned Artisans: The Circle of ʿAbd al-Wahhāb al-Shaʿrānī," 153-68, at 153, 156-7.

[71] Al-Shaʿrānī, *Kashf al-Ghumma*, 7; al-Shaʿrānī, *al-Mīzān*, 1:21.

[72] For a discussion of revivalist thought prior to the eighteenth century, see Konrad Hirschler, "Pre-Eighteenth-Century Traditions of Revivalism: Damascus in the Thirteenth Century," *Bulletin of the School of Oriental and African Studies* 68:2 (2005): 195-214.

is irrelevant to the validity of a *ḥadīth* used by one of the eponyms, which is itself proof of its authenticity. Thus, he turns the traditionists' logic upside down.[73] Similarly, he declares that the Companions *ḥadīth* is accepted by the people of unveiling, i.e. the Sufis (*ahl al-kashf*), even though it is disputed by traditionists.[74]

It is perhaps telling that the first *ḥadīth* cited by al-Shaʿrānī in connection with his decision to present the Prophetic traditions without interpretation or paraphrasing is the one in which the Prophet permits paying visits to graves after having prohibited it. In al-Shaʿrānī's theory, the prohibition suits certain people, whereas the permission suits others. In his mind, however, both are part of the Sharīʿa and therefore it is not appropriate to use abrogation (*naskh*) to resolve contradictions in Prophetic traditions.[75]

Al-Shaʿrānī collected the Prophetic traditions used as evidence for the views of the four schools to demonstrate that all those views are based on textual sources and flow from the spring of Sharīʿa. Hence, no part of the four schools should be rejected by the purists.[76] To support his claim, al-Shaʿrānī cites the *ikhtilāf ḥadīth*, as well as the Companions *ḥadīth*, even though he points out that many traditionists did not accept the latter.[77] His concern about the practice of laypeople echoes Ibn ʿArabī's brief condemnation, in *al-Futūḥāt al-Makkiyya*, of the purists' rejection of pragmatic school boundary-crossing, which they regard as a manipulation of religion.[78] What al-Shaʿrānī does is develop Ibn ʿArabī's views into a theory of the function of legal pluralism.

Ḍarūra-Pragmatists

As we saw above, al-Shaʿrānī's support for the pragmatic selection of juristic opinions for non-evidential reasons contrasts sharply with the purists' wish to search for the one correct view. His work also represents

---

73) Al-Shaʿrānī, *Kashf al-Ghumma*, 7.

74) Al-Shaʿrānī, *al-Mīzān*, 1:26.

75) Al-Shaʿrānī, *Kashf al-Ghumma*, 4-5.

76) Ibid., 4.

77) Al-Shaʿrānī, *al-Mīzān*, 1:7, 26.

78) Ibn ʿArabī, *al-Futūḥāt al-Makkiyya*, 1:392.

a departure from the views of what we can call *ḍarūra*-pragmatists, such as al-Zarkashī and al-Subkī, who stand somewhere between the purists and pragmatists. *Ḍarūra*-pragmatists argue that if someone is in need of a more lenient juristic view, he/she can seek it in another school, albeit only on a case-by-case basis according to need, as assessed by a *muftī*.

The restrictions placed on laypeople by *ḍarūra*-pragmatists are absent in al-Shaʿrānī's theory. Unlike *ḍarūra*-pragmatists, he treats laypeople (*ʿawāmm*) as being in a constant state of weakness, and therefore in perpetual need of *rukhṣa*. Their status is contrasted with the *ʿulamāʾ* and Sufis, described as people of piety (*ahl al-waraʿ*) and high religious status (*al-akābir*), who are not inherently weak.[79] Weakness and strength are defined by religious knowledge, whether esoteric or exoteric. Since the spring of Sharīʿa is one, al-Shaʿrānī argues, the water fetched by a scholar (*ʿālim*) is the same as that of a layperson, so long as it comes from the same source. He uses this metaphor to stress the equal validity of all school opinions, but also to establish lack of knowledge as weakness.[80] Since laypeople are in a constant state of weakness, they can always follow a less stringent juristic opinion. This can be done as a matter of habit, and generalized to an entire group of people.

In other words, a person who follows the Mālikī school in his ritual and legal activities might wish to use the less stringent Shāfiʿī requirement of washing only three hairs, rather than all his hair, as required by the Mālikīs. Since, in al-Shaʿrānī's view, the layperson is in a constant state of weakness, the person performing ritual ablution in the above example is not required to seek the assessment of a *muftī* to determine whether or not he qualifies for the *rukhṣa*. This can be done by showing, for instance, that he is sick and cannot wash all his hair in the winter. Instead, as a layperson, who is weak by nature, he can automatically select a less stringent juristic view. This is starkly different from the approach of the *ḍarūra*-pragmatists, according to whom need is not linked to an entire group of people such as 'laypeople,' but rather determined by a *muftī* on a case-by-case basis.

---

79) Shaʿrānī, *al-Mīzān*, 2:64-75, 185.
80) Ibid., 1:10.

Unlike al-Shaʿrānī, who treats laypeople as weak and in need of *rukhṣa* at all times, *ḍarūra*-pragmatists do not accept the frequent selection of a less stringent juristic view because frequency may indicate the lack of a pressing need. They understood frequency as a sign of manipulation of the concepts of need and necessity. Thus, al-Subkī permits a choice between juristic views for pragmatic reasons in cases of need or necessity, so long as it is not practiced so often that utility becomes one's religion.[81] Al-Subkī's and al-Zarkashī's understanding of need and necessity is different from that of al-Juwaynī and al-Ghazālī, e.g., to save someone from starvation. Al-Subkī permits *tatabbuʿ al-rukhaṣ* when one encounters a "taxing necessity" (*ḍārūratᵘⁿ arhaqathu*), which is clearly not a life-threatening situation.[82] Unlike *ḍarūra*-pragmatists, al-Shaʿrānī does not forbid the frequent selection of a less stringent juristic view, as he frees it from *ḍarūra* and *ḥāja* and ties it to a more stable category, in which all laypeople are permitted to continue practicing their eclectic juristic pragmatism without any compunctions.

Proponents of Tamadhhub

Proponents of *tamadhhub* contend that their *madhhab* is correct and all others are wrong. In this case, their condemnation of changing schools is motivated by a perception of the superiority of their *madhhab*. In other cases, the restriction is driven by a desire to restrict pragmatic school boundary-crossing. This practice was rejected by purists, who sought the one correct view wherever it was and refused to accept the claims to absolute truth made by the followers of different schools.

The *tamadhhub* position was criticized by al-Shaʿrānī, who says that holding such a view represents an insult to the eponyms, even though *tamadhhub* supporters might pay lip service to them by saying that they were guided by God (*ʿalā hudᵃⁿ min rabbihim*). He adds that deep in their hearts, they do not follow their verbal declarations. This is a sign of hypocrisy.[83] Al-Shaʿrānī's anti-*tamadhhub* position is also a rejection

---

[81] Al-Subkī, *Fatāwā al-Subkī*, 1:147.

[82] Ibid., 1:146-8.

[83] This notion of the rejection of a *mujtahid*'s view as an insult can be traced to Ibn ʿArabī, who warned against casting doubt on the ruling of a *mujtahid* because it is the law (*sharʿ*) of God. This is a mistake, he explains, made by the followers of all the schools of law. Such

of Ottoman Ḥanafization, which, according to this reasoning, was an insult to the eponyms of the other three schools.

But what about people who—without coercion from the proponents of *tamadhhub,* whether local jurists or Ḥanafizing Ottoman officials— abide by one school only in all their transactions? On this issue, we can clearly see al-Shaʿrānī's descriptive approach, which endeavors to justify local, legal practice. Although he calls for the selection of juristic views based on people's strength, he does not reject the practice of people who do not change their schools at all. He cites Ibn ʿArabī as saying that if someone abides by one *madhhab* only, this eventually would lead him to the spring of Sharīʿa.[84] The implication in al-Shaʿrānī's argument is that laypeople's practice of *tamadhhub* (which came about due to historical and geographical reasons) should be condoned. However, as he made his position clear, neither proponents of *tamadhhub,* such as the Ottomans, nor purists have any right to force laypeople to follow the doctrine of one school or exercise *tarjīḥ.* By recognizing this practice, despite his general preference for a wider use of the four Sunni schools in line with Mamluk juristic practice, he was again siding with laypeople against both the doctrinal view of *tamadhhub* and its manifestation in Ottoman Ḥanafization.

The Scope of Legal Diversity

Perhaps one of the most ambiguous elements of al-Shaʿrānī's theory is whether he considers the school views of non-eponyms as part of his *Mīzān.* On some occasions he explicitly includes the contradictory views within each school in his *Mīzān.* In one instance, he introduces a question by an imagined interlocutor, who asks whether a *muqallid* must use the preponderant view within his school. His answer is that he should choose the correct view, which is the general practice of people. However, if the *muqallid* is able to appreciate his theory (*waṣala ilā maqām al-dhawq*), he will see that all the views of scholars issue from

---

an insult is offensive to God himself. See al-Shaʿrānī, *al-Mīzān*, 1:4; Ibn ʿArabī, *al-Futūḥāt al-Makkiyya*, 1:348.

84) Al-Shaʿrānī, *al-Mīzān*, 1:13, 19.

the spring of Sharīʿā.[85] Similarly, his imagined interlocutor asks if a *muftī* who is qualified to issue *fatwās* according to the four schools is required to abide by the preponderant view. Al-Shaʿrānī agrees with the imposition of this restriction on the *muftī*, unless the less preponderant view is a safer option (*aḥwaṭ*). Although he prefers the preponderant view, he considers the other views to be part of the Sharīʿa and therefore potential rulings for those who seek stringent juristic views (*ʿazīma*).[86]

The followers of the eponyms are included in the *Mīzān*, which means that al-Shaʿrānī considers all school doctrines to be part of the Sharīʿa:

> If you looked with fair eyes at this [*Mīzān*] you would realize the soundness
> of the belief that all four of the imams and their followers (*muqallidīhim*)
> (may God be satisfied with them all) have been guided aright by God out-
> wardly (*ẓāhir*) and inwardly (*bāṭin*) and you would never object to those
> who adhere to one of these schools.[87]

On another occasion, he explains that had previous scholars of *tarjīḥ*, followers of the eponyms, learned about the two levels of the *Mīzān*, they would not have classified the views within their schools into dif-ferent degrees of soundness. Instead, they would have considered all these views to be correct.[88] According to this definition of legal plural-ism, we should be talking about *pragmatic eclecticism*, rather than *prag-matic school boundary-crossing*, since the choices are both within the school (vertical) and across school boundaries (horizontal).

Notwithstanding the evidence pointing to a general definition of 'school' that includes the opinions of the eponym and his followers, al-Shaʿrānī on one occasion narrowly defines the eponym's doctrine as those views he held until he died, as opposed to what was understood by his companions.[89] Such a narrow definition was used to defend Abū Ḥanīfa against the attacks of the purists by arguing that some of Abū Ḥanīfa's controversial views developed later and were, therefore, not really part of his doctrine. The suggestion that the eponym should not

---

85) Ibid., 1:10.
86) Ibid., 1:14.
87) Ibid., 1:6.
88) Ibid., 1:30.
89) Ibid., 1:58.

be blamed for those views implies that they may be blameworthy, which would mean that they are outside the Sharīʿa. Al-Shaʿrānī does not explicitly try to reconcile this seeming contradiction, but it is possible that he used this argument disingenuously to defend Abū Ḥanīfa. After all, he describes himself at the beginning of his work as someone who loves concord and hates discord.[90]

Additional evidence in the *Mīzān* suggests that school views should not be arranged in hierarchies of soundness since they are all part of the Sharīʿa and represent different levels of need and ability. This reading of al-Shaʿrānī opens up almost all the diverse doctrines of traditional Islamic law to the fold of Sunni legal pragmatic eclecticism.

Al-Shaʿrānī's Legacy

Based on probate inventories (*tarikāt*), Hudson has demonstrated that al-Shaʿrānī was the single most popular author in 19th-century Damascus. His works appeared in 50% of the inventories she examined, with his *Mīzān* being the most widely-read.[91] Despite the small size of her sample, these findings confirm my observation about the popularity of al-Shaʿrānī. His contribution to the acceptance of pragmatic eclecticism is not limited to his theory of legal pluralism, of whose novelty he was fully aware. More important is that his views are extensively cited by later scholars.

In 1859, the Mālikī jurist Ḥasan al-ʿIdwī al-Ḥamzāwī wrote a treatise partly dedicated to discussing current issues, such as restricting judgeships to one school. He confirmed that it is not a contradiction of the rules of Sharīʿa to use only the Ḥanafī school, since Abū Ḥanīfa did not give priority to analogy over the textual sources, as some of his opponents claimed. In al-ʿIdwī's discussion, he cites entire sections of al-Shaʿrānī's *Mīzān* to exonerate Abū Ḥanīfa and promote his position of *tamadhhub*. In light of al-Shaʿrānī's preference for switching schools according to people's ability, this is ironic.[92]

---

90) Ibid., 1:4.

91) Leila Hudson, "Reading al-Shaʿrānī: The Sufi Genealogy of Islamic Modernism in Late Ottoman Damascus," *Journal of Islamic Studies* 15:1 (2004): 39-68.

92) Ḥasan al-ʿIdwī al-Ḥamzāwī, *Tabṣirat al-Quḍāh waʾl-Ikhwān* (Cairo: Dār al-Ṭibāʿa al-Mīriyya al-Miṣriyya, 1859), 14-19.

In 1903, a question was sent to Rashīd Riḍā by an anonymous Azharī who said that he had read al-Shaʿrānī's *Kashf al-Ghumma*, and, specifically his discussion of contradictory prophetic traditions in terms of *ʿazīma* and *rukhṣa*. In his response published in *al-Manār*, Riḍā said that *Kashf al-Ghumma* was one of al-Shaʿrānī's best books, and it contains very little misinformation (*khalṭ*), but he cautioned that some of the *aḥādīth* used by al-Shaʿrānī are not reliable. Riḍā then referred the anonymous Azharī to al-Shawkānī's *Nayl al-Awṭār Sharḥ Multaqā al-Aḥbār* for more reliable Prophetic traditions.[93]

It was the views of scholars such as al-Shaʿrānī that contributed to the acceptance of the legal modernization efforts of ʿAbduh, Riḍā and later al-Sanhūrī. In this respect, his contribution cannot be overstated. A cursory look at the modern codification of Islamic law in a country like Egypt or at the efforts of contemporary scholars such as Yūsuf al-Qaraḍāwī, or lay intellectuals such as Jamāl al-Bannā or Rāshid al-Ghannūshī shows the influence of al-Shaʿrānī's views on legal diversity. Despite these scholars' different approaches and objectives, they tend to achieve their aims through an eclectic approach to the legal tradition that relies selectively on the vast body of doctrine within the four Sunni schools. One of the main characteristics of legal reform is that it treats the diverse views within Islamic substantive doctrine as part of the Sharīʿa that can be freely utilized for modernization. This view, which developed discursively over time, was partly designed to challenge the anti-pragmatic view and to legitimize existing social practice.

Conclusion

Juristic views on pragmatic forum selection changed in response to practice and to the stabilization of the doctrine of *taqlīd*, as I have shown elsewhere.[94] The *ikhtilāf ḥadīth* has frequently been misused by legal historians to refer to an imagined unanimous agreement over the pragmatic selection of juristic views so long as there is no *talfīq*. It is this view of the doctrine of legal pluralism that has for so long distorted

---

[93] Muḥammad Rashīd Riḍā, "Al-Ijtihād waʾl-Taqlīd," *al-Manār* 6:6 (1903): 236-40, at 236.

[94] Ibrahim, "School Boundaries and Social Utility in Islamic Law," 39-108.

our understanding of al-Shaʿrānī's contribution to legal theory and practice.

The view that al-Shaʿrānī's theory was a reiteration of old doctrine conforms with the static view of Islamic legal doctrine that sees little change in Islamic doctrine in the post-formative period. Al-Shaʿrānī made an essential contribution to a heated debate among both his predecessors and contemporaries. Far from rehashing old doctrine, he departed in significant ways from the views of other jurists involved in this debate. In fact, his view belonged to the new paradigm that challenged the long-held anti-pragmatic strand within Islamic law, represented by the eponyms and early jurists. He was not satisfied with the limited licenses provided by *ḍarūra*-pragmatists in cases of need or necessity. His project sought to provide laypeople with access to the views of the four different schools as a matter of habit and without subjecting them to feelings of guilt and doubt.

Perhaps the most direct indication of this dimension of al-Shaʿrānī's work is his introduction to *Kashf al-ghumma*, in which he describes the context of his legal work and the practice of laypeople. Al-Shaʿrānī challenged not only purists and proponents of *tamadhhub*, but also *ḍarūra*-pragmatists, who believed in the unity of truth and, on occasion, in the necessity of seeking out the one "correct" view. Al-Shaʿrānī's approach is different in that it was meant to accommodate the practices of laypeople and defend them against the attacks of purists. In this sense, it was a descriptive account of already existing legal practices. Indeed, al-Shaʿrānī has no scruples about reversing the logic of jurists like al-Zarkashī by arguing that the use of a Prophetic tradition by one of the imams is proof of its validity, rendering *ḥadīth* criticism unnecessary.[95] The purists' focus on *ḥadīth* and rejection of juristic scholasticism, as well as al-Shaʿrānī's engagement with this debate, shows that the tensions observed in 18th-century revivalist thought have much earlier roots.

Al-Shaʿrānī's approach should not be read simply as legal or mystical speculation, but rather as a response to social needs and practices. And it should be read in the context of Ottoman Ḥanafization and homogenization efforts, which were rejected by al-Shaʿrānī. His understanding

---

[95] Al-Shaʿrānī, *Kashf al-Ghumma*, 4, 7.

of the relationship among the schools is similar to Mamluk practice, which came on the heels of arguments made by Ibn ʿArabī and Ibn ʿAbd al-Salām in the 13th century, a few decades before Baybar's appointment of four chief judges in Cairo. Just as al-Shaʿrānī advocated the primacy of local saints over the saints of Anatolia,[96] so too he advocated local, Mamluk legal pluralism against Ottoman attempts at homogenization.

Al-Shaʿrānī's work represents an important node of authority on the pragmatic side of the debate over legal pluralism. It is through the work of al-Shaʿrānī and others, who challenged the classical aversion to pragmatic eclecticism, that we should understand the modern utilization of such techniques and the limited opposition to the modern codification of Sharīʿa among the *ʿulamā'* in a country like Egypt.

---

[96] Sabra, "Illiterate Sufis and Learned Artisans," 167.